

Remarks

Applicant respectfully requests reconsideration of the present U.S. Patent application as amended herein. Claims 1, 6 and 11 have been amended. Claims 2, 3, 7, 8, 12, 13, 17 and 21 have been canceled previously. No claims have been added. Thus, claims 1, 4-6, 9-11, 14-16, 18-20 and 22-28 are pending.

Claims 1, 4-6, 9-11, 14-16, 20, 22 and 24-27

Claims 1, 4-6, 9-11, 14-16, 20, 22 and 24-27 were rejected as being unpatentable over U.S. Patent No. 6,009,106 issued to Rustad (*Rustad*). For at least the reasons set forth below, Applicant submits that claims 1, 4-6, 9-11, 14-16, 20, 22 and 24-27 are not rendered obvious by *Rustad*.

Applicants further object to the Official Notice taken in the Office Action. While ADSL is known in the art, ADSL is not interchangeable with the DSL variants disclosed by *Rustad*. Specifically, *Rustad* discloses HDSL, SDSL and VDSL. See col. 10, line 20. HDSL and SDSL are both symmetric DSL protocols (same bandwidth in each direction) in contrast to ADSL as recited in the claims, which is asynchronous and provides different bandwidth in each direction. VDSL is a fiber optic based DSL protocol, which is incompatible with ADSL because ADSL uses telephone lines. Because the nature of the DSL protocol recited in the claims is substantially different than the types of DSL protocols disclosed by *Rustad*, it would NOT have been obvious to one of ordinary skill in the art to modify *Rustad* to attempt to achieve the claimed invention.

Although an Office Action may suggest that an element of a reference *could* be modified to form the claimed structure, the mere fact that the prior art *could* be so modified would not make the modification obvious unless the prior art suggested the desirability of the modification (emphasis added). *In re Laskowski*, 871 F.2d 115, 10 USPQ2d 1297 (CAFC 1989). There must be some supporting teaching in the prior art for the proposed modifications to be proper. *In re Newell*, 891 F.2d 899, 13 USPQ2d 1248 (CAFC 1989). As discussed above, the Official Notice modification is not based on any specific teaching of *Rustad* and is therefore insufficient to support the proposed modifications set forth in the Office Action.

Independent claims 1, 6, 11, 16, 20 and 24 each recite transmitting data according to an asynchronous digital subscriber line (ADSL) protocol. *Rustad* does not teach or even suggest transmitting data according to an ADSL protocol or any other type of asynchronous protocol. Applicants submit that there are additional differences between the claimed invention and the teachings of *Rustad*. Therefore, *Rustad* does not render obvious the invention as claimed in claims 1, 4-6, 9-11, 14-16, 20, 22 and 24-27.

Claims 19, 23 and 28

Claims 19, 23 and 28 were rejected as being unpatentable over *Rustad* in view of U.S. Patent No. 6,466,586 issued to Darveau, et al (*Darveau*). Claims 19, 23 and 28 depend from one of the independent claims discussed above. *Darveau* is not cited to, nor does *Darveau* cure the deficiencies of *Rustad* with respect to ADSL protocols. Therefore, no combination of *Rustad* and *Darveau* can teach or suggest the invention as claimed in claims 19, 23 and 28.

Conclusion

For at least the foregoing reasons, Applicant submits that the rejections have been overcome. Therefore, claims 1, 4-6, 9-11, 14-16, 18-20 and 22-28 are in condition for allowance and such action is earnestly solicited. The Examiner is respectfully requested to contact the undersigned by telephone if such contact would further the examination of the present application. Please charge any shortages and credit any overcharges to our Deposit Account number 02-2666.

Respectfully submitted,
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